

First, M.P.E.P. § 806.04 sets forth the criteria for restriction between species, stating that restriction between the species may be proper if the species are independent or distinct. The species here are not independent or distinct, as claims 29-34 and 41 all relate to, for example, a an electronic device including electrodes that are connected to and at the wiring patterns of the lid, and there would be no serious burden on the Examiner if restriction is not required. The Examiner alleges that Species I is drawn to a device including a sealing portion between the MEMS element and the lid surrounding an outside of the bonded part. As claim 41 of Species III specifically recites that the device includes a sealing portion provided between the MEMS element and the lid, sealing an outer portion of the bonded part of the substrate and the lid, it is unclear as to how the species are independent or distinct from one another.

In addition, M.P.E.P. § 808.01(a) recites that “election of species should not be required between claimed species that are considered clearly unpatentable (obvious) over each other. In making a requirement for restriction in an application claiming plural species, the examiner should group together species considered clearly unpatentable over each other.” Claim 41 cannot be construed to be clearly patentable (non-obvious) over, for example, independent claim 29. Claim 29 and claim 41 both disclose devices including a lid having wiring patterns bonded to a substrate of an MEMS element covering an active surface of the substrate, an operating space for a micromachine component defined by the substrate and the lid, electrodes of the MEMS element and wiring patterns of the lid being electrically connected at a bonded part of the substrate and the lid, and a sealing portion provided between the MEMS element and the lid, the distinction between the claims being only that claim 29 recites that the sealing portion is surrounding an outside of the bonded part and claim 41 recites that the sealing portion seals an outer portion of the bonded part of the substrate and the lid. It is unclear as to how such a minor distinction would classify the species in question as non-obvious over each other.

Additionally, it is unclear as to how such a minor distinction would result in a serious burden on the Examiner if restriction is not required.

Even if the Examiner considers non-elected claims 35-40 to be separate species from elected claims 29-34, the Applicants respectfully request the Examiner to consider claim 41 (Species III) and claims 29-34 (Species I) together.

III. Conclusion

Upon review of references involved in this field of technology, when considering the content of the claims directed to the various species and groups, and when all of the other various facts are taken into consideration, it is believed that upon reconsideration of the Examiner's initial restriction requirement, at least pending claims should be examined in the subject application.

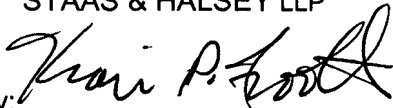
In view of the foregoing, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.

If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 19-3935.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

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